



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1009

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35174.

The Texas Department of Public Safety received a request for information relating to the investigation into the death of Rodney Steven Tyler. You contend that the requested information is excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code.

Section 552.108 excepts information concerning an incident involving allegedly criminal conduct that is still under active investigation or prosecution, Gov't Code § 552.108(a); any proper custodian of information which relates to the incident may invoke section 552.108, Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public). We note that although this information is generally found on the front page of the offense report, the location of the information in an investigation file is not determinative of its disposition. It is the content of the information that must be examined in light of the *Houston Chronicle Publishing Co.* case.

You state that the investigation into the death is on-going, pending laboratory test results. Accordingly, except for the information deemed public by the *Houston Chronicle Publishing Co.* case, you may withhold the requested information under section 552.108.

We note that section 552.103, which excepts information relating to pending or reasonably anticipated litigation,¹ generally does not except the factual information deemed public by the *Houston Chronicle Publishing Co.* case. *See generally Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision Nos. 597 (1991), 362 (1983). Moreover, you do not demonstrate how the requested information relates to pending or reasonably anticipated litigation.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/LBC/ch

Ref: ID# 35174

Enclosures: Submitted documents

cc: Mr. Leslie Phillips
ACLU of Texas
P.O. Box 3629
Austin, Texas 78764-3629
(w/o enclosures)

¹*Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

²*See Heard*, 684 S.W.2d at 212 (arrest is not by itself sufficient to raise reasonable anticipation of litigation).